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# Germany Reopens Facebook Privacy Inquiry

2012-08-15 13:00:33

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By KEVIN J. O'BRIEN / The New York Times

BERLIN -- Data protection officials in Germany reopened an investigation into Facebook's facial recognition technology Wednesday, saying that the social networking giant was illegally compiling a huge database of members' photos without their consent.

The data protection commissioner in Hamburg, Johannes Caspar, had suspended the inquiry in June, but said he reopened it after attempts to persuade Facebook to change its policies had failed.

"We have met repeatedly with Facebook but have not been able to get their cooperation on this issue, which has grave implications for personal data," Mr. Caspar said during an interview.

The company's use of analytic software to compile photographic archives of human faces, based on photos uploaded by Facebook's members, has been controversial in Europe, where data protection laws require people to give their explicit consent to the practice. Instead of using such an opt-in system, Facebook assumes people will want

to use facial recognition and requires them to opt out instead.

Mr. Caspar, who led Germany's investigation into Google's illegal collection of personal Internet data during its Street View project, said he had met with Facebook executives several times on the issue since he opened his investigation in June 2011, but closed it a year later when Facebook appeared to be complying with his demands.

The Hamburg regulator is demanding that Facebook destroy its photographic database of faces collected in Germany and revise its Web site to obtain the explicit consent of members before it creates a digital file based on the biometric data of their faces. In their meetings, Facebook representatives acknowledged that the company was compiling biometric data on users, Mr. Caspar said, but have maintained that the practice is legal in Ireland, where Facebook's European operation is incorporated.

Mr. Caspar said he planned to end his investigation and make a formal request to Facebook to amend its practices by the end of September.

Facebook said in a statement that it was not breaking E.U. law with facial recognition software, which prompts members to "tag," or identify, people in photos uploaded to the service.

"We believe that the Photo Tag Suggest feature on Facebook is fully compliant with E.U. data protection laws," Facebook said. "During our continuous dialogue with our supervisory authority in Europe, the Office of the Irish Data Protection Commissioner, we agreed to develop a best practice solution to notify people on Facebook about Photo Tag Suggest."

Irish officials appear to dispute that view. They are concluding a second audit of the company's data protection practices. Gary Davis, Ireland's deputy data commissioner, said the agency was continuing its talks with Facebook and hoped to reach a settlement on obtaining a consent agreement and on the status of photo archives compiled from European users. Facebook, Mr. Davis said, had voluntarily agreed to suspend its tagging feature for all Europeans who join the social networking site as of July 1.

"Those discussions are continuing, and we remain hopeful that they will be concluded satisfactorily shortly," he said.

In Germany, Mr. Caspar could ultimately fine Facebook up to €25,000, or about \$30,000, should it refuse to destroy its biometric database and alter its consent practices.

He could choose to sue Facebook and try to obtain a court order to compel it to alter its German operations. But establishing legal jurisdiction will be difficult, Ulrich Börger said, especially over a global online company headquartered in the United States. Mr. Caspar said he was exploring that option.

In March, in response to the dispute, the European Union's top advisory panel on privacy, the Article 29 Working Party, released an opinion that the collection of biometric data without the explicit consent of users was illegal and a violation of European law.

The decision by the privacy panel, which is made up of the top regulators from the 27 E.U. countries, prompted the Irish regulator to reopen its own negotiations with Facebook on the issue. After an audit of Facebook last year, the Irish regulator advised the company that it was

sufficient to simply inform people of its biometric data collection practices.

Facebook did so in postings on its Web site this year. But the decision by the European panel has increased pressure on Irish regulators to take a tougher stance.

This article originally appeared in [The New York Times](#).  
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